

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1648-01  
Bill No.: HB 757  
Subject: Business and Commerce; Employees - Employers  
Type: Original  
Date: March 18, 2015

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Bill Summary: This proposal establishes the Professional Employer Organization Act.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
General Revenue	(\$699,009)	(\$466,911)	(\$474,449)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$699,009)</b>	<b>(\$466,911)</b>	<b>(\$474,449)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 9 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	8 FTE	8 FTE	8 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>8 FTE</b>	<b>8 FTE</b>	<b>8 FTE</b>

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Attorney General's Office (AGO)** assume the proposal provides in section 287.750.3 that persons accused of violating the proposal have "an opportunity for a hearing," and that certain actions of the Director of the Department of Labor are subject to appeal. The AGO may seek additional appropriations if the proposal results in a significant increase in cases.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume this legislation will require the DOLIR to set up a unit to manage Professional Employer Organization (PEO) registrations, collect fees, investigate and review records for compliance, and establish a hearing process for the findings.

In addition, DOLIR officials state this proposal adds a new section 285.745, which stipulates that PEOs registered under this act shall be treated as "lessor employing units" for the purposes of the unemployment insurance laws. This section also seems to require clients of PEOs to be treated as new employers when exiting a PEO relationship.

Finally, DOLIR officials assume this bill also modifies section 288.032.2(5) by changing the type of general business entity that, by definition, can be considered a "lessor employing unit" from an independently established business to a registered professional employer organization only.

#### Section 285.715

DOLIR officials state this section sets forth the filing time requirements for PEOs registering within Missouri and grants the DOLIR authority to issue initial, renewal, limited and interim registrations. The requirements include an annual renewal process. This section also requires the DOLIR to make the listing of PEOs available to the public by electronic or other means.

#### Section 285.720

DOLIR assumes Section 285.720 sets forth the maximum fees which can be charged for the PEO filings. It is assumed both the fees collected and costs to administer the activities would be attributable to General Revenue as no other fund has been established in this legislation.

ASSUMPTION (continued)

According to the StaffMarket website, there are currently 47 PEOs operating in the State of Missouri (it is assumed these are PEOs headquartered in Missouri). In addition, per the Division of Employment Security there are 274 Lessor Employee Units (LEUs) operating in Missouri. For the purpose of this fiscal note it is assumed LEUs will file as PEOs due to the language changes in Section 288.032.2.(5) which redefines the term "lessor employing unit" to mean a registered professional employer organization. It is also assumed that LEUs currently operating in Missouri do not include any of the 47 PEOs operating in this state.

In addition, according to the National Association of Professional Employer Organizations there are 700 to 900 PEOs nationwide. For the calculation of this fiscal note, it is assumed 900 PEOs operate nationwide of which 47 are based in Missouri. Therefore, 853 of the PEOs nationwide would be non-Missouri based PEOs. It is assumed 85 (10%) non-Missouri based PEOs would apply for registration within Missouri [900 (nationwide PEOs) less 47 (Missouri based PEOs) times 10%].

It is assumed that revenues from registration fees authorized by the bill will be deposited to General Revenue. Calculations are based on 321 initial registration fees of \$500 (\$160,500 in the initial year) and 85 limited registration fees of \$250 (\$21,250). Each year thereafter, it is assumed that 95% of the existing PEOs (386) would renew at \$250 each and 5% (20) of the existing PEOs would be new registrations requiring the \$500 fee for a total of \$106,500 in revenue each year  $((406 \times 95\% \times \$250) + (406 \times 5\% \times \$500))$ .

Section 285.745

DOLIR officials assume Section 285.745 provides that, for purposes of the unemployment compensation laws, a PEO registered under this act shall be treated as a "lessor employing unit" (LEU) under section 288.032. On the termination of a contract between a PEO and a client or the failure by a PEO to submit reports or make tax payments as required by this act, the client shall be treated as a new employer without a previous experience record unless that client is otherwise eligible for an experience rating.

Section 285.750

In addition, DOLIR assumes Section 285.750 assigns the responsibility for conducting hearings and imposing penalties on those who knowingly violate this act.

ASSUMPTION (continued)

This will require the DOLIR to investigate and establish an appeals process for persons who knowingly violate the provisions of this legislation. It is assumed that 10% of those which register as a PEO would be reviewed or investigated for violations. It is further assumed that 5% of the 10% (406 x 10% x 5%) investigated would result in material violations which would result in an administrative penalty. These assumptions would indicate that 2 PEOs per year could be charged an administrative penalty of up to \$1,000 each.

The requirements set forth in this legislation are not consistent with the functions currently performed by the DOLIR. Additional staff will be needed to perform all the functions specified above. Staffing will include: 1.0 Labor and Industrial Manager (B2), 1.0 Hearings Officer, 1.0 Investigator, 2.0 Auditors II, 2.0 Processing Technicians II, and 1.0 Senior Office Support Assistant. Additional one-time equipment costs and on-going expenses are figured at the standard rates. In addition, ITSD will be required to develop a tracking system for the PEOs fees and registrations as set forth in this legislation at a cost of \$425,250 in FY 2016, \$87,176 in FY 2017 and \$89,355 in FY 2018.

Division of Employment Security (DES)

Division of Employment Security assume this proposal contains two provisions that affect Missouri's unemployment insurance (UI) program.

Section 288.032

Under this section, DES assumes a registered PEO will be treated as a "lessor employing unit" under section 288.032. In addition, this bill appears to require upon the termination of a contract between a PEO and a client, the client will be treated as a new employer without a previous experience record unless that client is otherwise eligible for an experience rating.

The United States Department of Labor (USDOL) conducted an informal review of this bill and stated the bill does not appear to be consistent with a new federal law, Public Law 113-295, that recognizes PEOs in that this bill seems to require clients of PEOs to be treated as new employers when exiting a PEO relationship. The new federal law appears to propose that the taxable wage base will not restart when a client joins or leaves a PEO mid-year. The USDOL also stated that it is working in consultation with the Internal Revenue Service on guidance pertaining to the new federal law; however, no time table has been set for issuance of such guidance.

ASSUMPTION (continued)

Section 288.032

This modification changes the type of general business entity that, by definition, can be considered a "lessor employing unit" under section 288.032.2(5) from an independently established business to a registered professional employer organization. This change appears to indicate the only way a general business entity can be a lessor employing unit (LEU) is to be a registered PEO. If there were any current LEUs that did not register as PEOs according to the provisions in this bill, their unemployment insurance (UI) accounts would need to be inactivated and the Division of Employment Security (DES) would need to determine if the clients of non-registered PEOs have established liability under Missouri Employment Security Law, and if so, establish UI accounts for such clients.

Also, in order to relieve clients from joint and several liability, LEUs would have to financially guarantee payment as set forth in Chapter 288, and the LEU would have to register as a PEO and comply with financial requirements under the provision in this bill.

This bill contains many provisions and requirements that are not related to Missouri's UI program. The DES receives an annual UI administration grant from the USDOL to operation Missouri UI program. The UI administration grant cannot be used to administer the non-UI related provisions.

**Oversight** will indicate additional revenue and costs to the General Revenue Fund for the Department of Labor and Industrial Relations to implement this proposal.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

ASSUMPTION (continued)

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Joint Committee on Administrative Rules** state this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Department of Social Services**, the **Department of Mental Health** and the **Office of Administration** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a similar proposal from last year (HB 2203), officials from the **Department of Conservation**, the **Department of Insurance, Financial Institutions, and Professional Registration**, the **Department of Revenue** and the **Department of Transportation** assumed this proposal would have no fiscal impact on their organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>GENERAL REVENUE FUND</b>			
<u>Revenue - DOLIR</u> Registration Fees & Renewals Section 285.720	\$181,750	\$106,500	\$106,500
<u>Revenue - DOLIR</u> Administrative Penalties Section 285.750	\$2,000	\$2,000	\$2,000
<u>Cost - DOLIR Section 285.750</u>			
ITSD programming costs	(\$425,250)	(\$87,176)	(\$89,355)
Personal Service	(\$247,735)	(\$300,255)	(\$303,257)
Fringe Benefits	(\$128,835)	(\$156,148)	(\$157,709)
Expense and Equipment	<u>(\$80,939)</u>	<u>(\$31,832)</u>	<u>(\$32,628)</u>
<u>Total Cost - DOLIR</u>	<u>(\$882,759)</u>	<u>(\$575,411)</u>	<u>(\$582,949)</u>
FTE Change - DOLIR	8 FTE	8 FTE	8 FTE
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(\$699,009)</u></b>	<b><u>(\$466,911)</u></b>	<b><u>(\$474,449)</u></b>
Estimated Net FTE Change for the General Revenue Fund	8 FTE	8 FTE	8 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2016 (10 Mo.)	 FY 2017	 FY 2018
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact to a small business which operates as a Professional Employer Organization.

### FISCAL DESCRIPTION

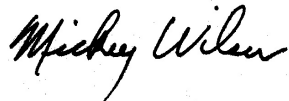
This proposal would implement the Professional Employer Organization Recognition and Registration Act.

The proposal includes provisions regarding the formation, operation, registration, and regulation of such organizations, and defines the relationships between and among the various entities involved in the organization and with state agencies.

This legislation is not federally mandated, would not duplicate any other program. The proposal may require additional capital improvements or rental space for the new FTE.

### SOURCES OF INFORMATION

Office of the Secretary of State  
Office of the Attorney General  
Joint Committee on Administrative Rules  
Office of Administration  
Department of Conservation  
Department of Economic Development  
Department of Insurance, Financial Institutions, and Professional Registration  
Department of Labor and Industrial Relations  
Department of Mental Health  
Department of Revenue  
Department of Social Services  
Department of Transportation



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